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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FRANZ SIEBERER

Appeal 2009-0592
Application 10/773,275
Technology Center 3600

Decided:¹ March 26, 2009

Before: WILLIAM F. PATE, III, LINDA E. HORNER and
JOHN C. KERINS, *Administrative Patent Judges*.

PATE, III, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF CASE

Appellant appeals under 35 U.S.C. § 134 from a rejection of claims 1-9². Br. 2; *see also* Re. Br. 3. We have jurisdiction under 35 U.S.C. § 6(b).

The claims are directed to a transport securing arrangement for a side extension arm of a vehicle.

Claim 1 is illustrative of the claimed subject matter and is reproduced below:

1. A transport securing arrangement for a side extension arm of a vehicle, said transport securing arrangement comprising:
 - a locking device; and
 - a securing hook,wherein said locking device and said securing hook are arranged such that both said locking device and said securing hook are operable to act on the side extension arm, and
 - wherein said locking device is arranged in relation to said securing hook such that a release of said locking device leads to a release of said securing hook from an anchorage position.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Roberts	US 3,789,638	Feb. 5, 1974
Murphy	US 4,943,181	Jul. 24, 1990
Enzinger	EP 0 694 460 A1	Jan. 31, 1996

² Appellant's remarks regarding the propriety of inserting a rejection of claim 8 into the Examiner's answer (Re. Br. 2) are noted but are moot in light of the reversal of the rejections of parent claim 1.

Claims 1-5, 8 and 9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Markus³ [Enzinger]. Ans. 3. Claims 1, 4 and 7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Murphy. Ans. 5. Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Markus [Enzinger] in view of Roberts. Ans. 6.

Appellant argues that the Examiner erred by rejecting independent claim 1, and therefore also dependent claims 2-5, 8 and 9, as being anticipated by Enzinger because Enzinger fails to disclose a locking device and securing hook that are both operable to act on the side extension arm as required by claim 1. Br. 4-5; Re. Br. 5-8. Appellant also argues that the Examiner erred by rejecting independent claim 1, and therefore also dependent claims 4 and 7, as being anticipated by Murphy because Murphy fails to disclose a locking device and securing hook that are both operable to act on the side extension arm as required by claim 1. Br. 7-8; Re. Br. 9. The rejection of claim 6 as being anticipated by Enzinger has been withdrawn by the Examiner (Ans. 8) making Appellant's arguments pertaining to that rejection (Br. 6) moot. The Examiner has entered a new ground of rejection of claim 6 in the Answer as being unpatentable over Enzinger in view of Roberts. Ans. 6. Appellant argues that the Examiner erred by rejecting claim 6 as unpatentable over Enzinger in view of Roberts because Roberts does not supply any teaching that is capable of being applied to Enzinger in order to render the combination described in claim 6 obvious. Re. Br. 11-12.

³ The Enzinger reference is referred to by the Examiner as the "Markus" reference, Markus being the given name of inventor Enzinger.

ISSUES

Has Appellant established that the Examiner erred in rejecting claim 1 as being anticipated by Enzinger because Enzinger fails to disclose a locking device and securing hook that are both operable to act on the side extension arm?

Has Appellant established that the Examiner erred in rejecting claim 1 as being anticipated by Murphy because Murphy fails to disclose a locking device and securing hook that are both operable to act on the side extension arm?

FINDINGS OF FACT

1. Enzinger discloses a bracing mechanism for a support truck having a horizontal beam 1 that, during travel, is locked into a housing 2 by rotating a lever 3 which is attached to a claw 4 that engages a peg 5 arranged on the housing 2. Translation of Enzinger p. 5. To ensure that the lever 3 is not moved to an upper (Fig. 3a) position, a locking element 11 is provided on the beam 1 which cooperates with a latching notch 10 provided on the lever 3. Translation of Enzinger p. 6. The lever 3, and with it the latching notch 10, is also pivotally mounted on the beam 1. Translation of Enzinger p. 5.
2. In rejecting claim 1 as being anticipated by Enzinger, the Examiner equates Enzinger's locking element 11 to the claimed "locking device"; the latching notch 10 to the claimed "securing hook" and the beam 1 to the claimed "side extension arm." Ans. 3-4.
3. Murphy discloses a quick disconnect coupling for pick and place devices. Col. 1, ll. 1-2. The quick disconnect device 10 includes a housing

member 11, a locking member 13, and a cam arrangement 15. Col. 3, ll. 6-7. The cam arrangement 15 is fixedly secured to the housing member 11 by bolting (shown in Fig. 3 but not discussed) the flange of annular housing member 18, which forms part of the cam arrangement (col. 3, l. 28-29), to the housing member 11. See Figs. 2-5.

4. In rejecting claim 1 as being anticipated by Murphy, the Examiner equates Murphy's cam arrangement 15 to the claimed "locking device"; the locking member 13 to the claimed "securing hook" and the housing member 11 to the claimed "side extension arm." Ans. 5.
5. The ordinary and customary meaning of the phrase, "act on" is to influence or affect. *See e.g., THE AMERICAN HERITAGE® DICTIONARY OF IDIOMS* (1997).

PRINCIPLES OF LAW

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). These elements must be arranged as in the claim under review but this is not an *ipsissimis verbis* test. *In re Bond* 910 F.2d 831, 831 (Fed. Cir. 1990).

Where no explicit definition for a term is given in the specification, the term should be given its ordinary meaning and broadest reasonable interpretation. *E-Pass Technologies, Inc. v. 3Com Corporation*, 343 F.3d 1364, 1368 (Fed. Cir. 2003). The ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention. *Phillips v. AWH*

Corp., 415 F.3d 1303, 1319 (Fed. Cir. 2005) (en banc). An applicant is entitled to be his or her own lexicographer and may rebut the presumption that claim terms are to be given their ordinary and customary meaning by clearly setting forth a definition of the term that is different from its ordinary and customary meaning(s). *See In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

ANALYSIS

Claim 1 requires, “both [the] locking device and [the] securing hook [to be] operable to act on the side extension arm.” Appellant has not provided any explicit definition of the phrase, “act on” in the Specification. Accordingly, the phrase is given its ordinary and customary meaning and the claim is given its broadest reasonable interpretation consistent with the Specification. The ordinary and customary meaning of the phrase “act on” is to influence or affect. Fact 5. For example, one mechanical element may be said to influence or affect, and therefore “act on,” another by encouraging or discouraging movement of that element. This meaning is consistent with the usage in the Specification which, for example, provides, “the locking device can also be acted upon by a spring in the direction of the locking position” Spec. 2. The spring influences the locking device by exerting a force upon it which urges it in the direction of the locking position. The locking device and securing hook influence or affect, and therefore “act on,” the extension arm by restricting its motion. Spec. 4 ll. 17-20.

In order for the locking device and securing hook to be operable to influence the side extension arm, the locking device and securing hook must both be capable of operating so that they influence the extension arm. In order for the claimed locking device and securing hook to be capable of

influencing the side extension arm of a vehicle, the side extension arm of the vehicle must be an element of the combination recited in claim 1 (Re. Br. 6) and not merely an element that the claimed combination is intended to be used in conjunction with as the Examiner suggests (Ans. 8).

Regarding the rejection of claim 1 as being anticipated by Enzinger, Enzinger does not disclose that the locking element 11, read as the claimed “locking device” (Fact 2), which is always mounted on the beam 1 (Fact 1), is capable of operating so that it will influence or affect the beam 1 in any way. See Br. 5; Re. Br. 7. The Examiner has apparently misinterpreted the operation of the locking element 11 disclosed in Enzinger as enabling extension or retraction of the beam 1, when the locking element 11 does not operate in such a manner. Re. Br. 6; Ans. 8. To conclude that the locking element 11 is capable of operating to “act on” the beam 1, absent any evidence of that capability in Enzinger, amounts to speculation and conjecture on the part of the Examiner and cannot form the basis for a rejection under 35 U.S.C. § 102(b). Since Enzinger does not disclose each and every limitation of claim 1, the rejection of claim 1, and therefore the rejection of claims 2-5, 8 and 9 depending therefrom, as being anticipated by Enzinger, cannot be sustained.

Regarding the rejection of claim 1 as being anticipated by Murphy, Murphy does not disclose that the cam arrangement 15, read as the claimed “locking device” (Fact 4) is capable of operating to influence or affect the housing member 11, read as the claimed “side extension arm” (Fact 4). The cam arrangement 15 of Murphy is always fixed to housing 11. Fact 3. During operation, the rod member 21 moves from a first position (Fig. 4) to a second position (Fig. 5) by moving rod 21 through opening 16 further into

the housing 11. Rod member 21 never contacts the housing 11 and annular housing member 18 is fixedly secured to the housing 11. Murphy, therefore, does not disclose the cam arrangement 15 or any component thereof that is operable to influence or affect the housing member 11. To conclude that the cam arrangement 15 is capable of operating to “act on” the housing 11, absent any evidence of that capability in Murphy, amounts to speculation and conjecture on the part of the Examiner and cannot form the basis for a rejection under 35 U.S.C. § 102(b). Since Murphy does not disclose each and every limitation of claim 1, the rejection of claim 1, and therefore the rejection of claims 4 and 7 depending therefrom, as being anticipated by Murphy cannot be sustained.

Regarding claim 6, Roberts does not cure the deficiencies of Enzinger noted above. The rejection of claim 6, therefore, as being obvious over Enzinger in view of Roberts, also cannot be sustained. Appellant’s remaining arguments pertaining to the rejection of claim 6 (Re. Br. 10-12) are moot and are not addressed herein.

CONCLUSION OF LAW

On the record before us, Appellant has established that the Examiner erred in rejecting claims 1-5, 8 and 9 under 35 U.S.C. § 102(b) as being anticipated by Markus [Enzinger]; claims 1, 4 and 7 under 35 U.S.C. § 102(b) as being anticipated by Murphy; and claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Markus [Enzinger] in view of Roberts.

DECISION

For the above reasons, the Examiner's rejections of claims 1-9 are reversed.

REVERSED

vsh

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